

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO. 5564 OF 2009

**IMPROVEMENT TRUST, ROPAR
THROUGH ITS CHAIRMAN, ROPAR, PUNJAB**

..... Appellant

Vs.

SHASHI BALA & ANR.

..... Respondents

J U D G M E N T

SANJAY KUMAR, J.

1. Improvement Trust, Ropar [hereinafter, 'the Trust'], is in appeal against the directions of the High Court of Punjab & Haryana, Chandigarh, to allot a plot under discretionary quota to Shashi Bala, a social worker. By order dated 13.05.2008, this Court granted stay and the same was made absolute on 10.08.2009.

2. Heard Shri Birendra Kumar Mishra, learned counsel, appearing for the Trust; and Shri P.S. Patwalia, learned senior counsel, appearing for Shashi Bala.

3. Facts, to the extent relevant, unfold thus: Shashi Bala, a social worker, applied to the Chief Minister of Punjab for allotment of a plot of 500 square yards under his discretionary quota on 28.01.1987. Acting thereupon, by letter dated 11.02.1987, the Government of Punjab approved allotment of a residential plot

of 500 square yards in Development Scheme Giani Zail Singh Nagar of Improvement Trust, Ropar, to Shashi Bala out of the Government's discretionary quota under Rule 4 of the Punjab Town Improvement (Utilization of Land and Allotment of Plots) Rules, 1983 [for brevity 'the Rules of 1983'], at double the reserve price on usual terms and conditions. This allotment was subject to furnishing of an affidavit by Shashi Bala, as provided in the Rules, along with her Social Welfare Certificate. Upon exchange of correspondence between Shashi Bala and the Trust, Memo dated 04.07.1988 was issued by the Trust calling upon her to submit her duly attested affidavit, as per the enclosed proforma. The Trust stated that upon submission thereof, further action would be taken for allotment of a plot.

4. Shashi Bala claims to have complied with the aforesaid requirement but the allotment did not materialize, compelling her to highlight the issue in local newspapers. Thereupon, Press Note dated 10.01.1989 was issued by the Trust in Indian Express Newspaper stating that the documents pertaining to Shashi Bala's case had been sent to the concerned department for necessary action and the same would be intimated to her in due course. However, by Memo dated 02.01.1989, the Government of Punjab informed Shashi Bala that as there was no plot clearly available for allotment under the Scheme, her claim would be considered only after a plot became available.

5. Complaining of inaction and delay in processing the allotment of a plot to her, Shashi Bala filed CWP NO. 9737 of 1992

before the Punjab & Haryana High Court. Her prayer therein was to direct the authorities to allot her a plot of 500 square yards in Development Scheme Giani Zal Singh Nagar, Ropar. By judgment dated 17.11.2006, a learned Judge allowed the writ petition, noting that the Government had approved allotment of a plot in favour of Shashi Bala and she had complied with the formalities and submitted documents as required. The authorities were directed to allot a plot to her at the price which was fixed at the time when the Government had directed the Trust to allot her a plot in the Development Scheme of Giani Zail Singh Nagar, Ropar.

6. Aggrieved thereby, the Trust filed Letters Patent Appeal No. 12 of 2008. However, by judgment dated 23.01.2008, a Division Bench of the Punjab & Haryana High Court dismissed the appeal, holding that the Government had already approved allotment of a plot to Shashi Bala and there was a finding of fact that she had complied with the formalities and submitted documents as required. Hence, the present appeal by the Trust.

7. The above facts demonstrate that the direction in favour of Shashi Bala came to be passed by the learned Judge in November, 2006, and the same stood confirmed by the Division Bench in January, 2008. However, a crucial fact was not brought to the notice of either the learned Judge or the Division Bench, that is, the legal status of the discretionary quota rule, under which the Government of Punjab had approved allotment of a plot to Shashi Bala, at that point of time. Significantly, CWP No. 7401 of 1996, titled '**Dr. Amar Singh and others Vs. State of Punjab and**

another', filed before the Punjab & Haryana High Court long prior thereto had raised issues in the context of the Rules of 1983 and more particularly, the validity of the reservation of plots for select categories and the vires of the Government's discretionary quota. A Full Bench of the Punjab & Haryana High Court passed judgment dated 25.07.2003 in '**Dr. Amar Singh and others Vs. State of Punjab and another'** [AIR 2004 P&H 67] following the decision of another Full Bench of the High Court in the context of a similar regime of reservation of plots and allotment through discretionary quota in the State of Haryana. This earlier Full Bench decision dated 21.03.1997 was rendered in CWP No. 5851 of 1996, titled '**Anil Sabharwal Vs. State of Haryana'** [PLR (1997) 116 P&H 7(FB)]. Thereby, the Full Bench had observed that the discretion conferred on the Chief Minister was not immune from judicial review and ultimately declared illegal the allotment of residential plots under such discretionary quota. The allotments were quashed, subject to certain exceptions and directions. This Full Bench decision was assailed before this Court in a batch of Special Leave Petitions, but they came to be disposed of by the judgment reported in '**Harsh Dhingra Vs. State of Haryana'** [(2001)9 SCC 550], upholding the Full Bench decision with the only modification that it would be effective from 23.04.1996, being the date on which interim orders had been passed in CWP NO.5851 of 1996.

8. The system prevailing in the State of Punjab under Rule 4 of the Rules of 1983, apropos reservation of plots and the Government's discretionary quota, was practically identical to

that obtaining in the State of Haryana. Rule 4 of the Rules of 1983, to the extent relevant, reads as follows:

"4. Reservation of residential plots and multi-storeyed houses: - (1) Subject to the provisions of rule 10, residential plots and multi-storeyed houses shall be reserved for allotment to the following categories of persons to the extent specified against each: -

Category of Persons Extent of reservations

(i) to (vi).....

*(vii) Non-Resident Four per cent of plots of 500
Indians square yards size only*

Provided.....

Provided.....

Provided that 5 per cent of the residential plots and multi-storeyed houses shall be allotted by the Trust with the approval of the Government to such category or class of persons and in the manner as the Government may from time to time keeping in view the socio-economic conditions of such persons specify."

9. The Government of Punjab took a policy decision with regard to exercising power under this discretionary quota and the same is reflected in Notification No. 5/537/3CII-88/1604 dated 31.01.1989. This notification reads to the effect that the following categories of persons would be eligible for allotment of plots under the 5 per cent discretionary quota:

"(i) Those persons or their dependents who have suffered at the hands of terrorists or rioters;

(ii) those persons who have distinguished themselves in different fields eg. Sports, Arts, Science, Education, Social Service etc.

and have been recognized by the Government through State/National Awards.

(iii) Army, Police, para-military personnel who have received gallantry or bravery awards from the State Government or the Government of India and those civilians who have rendered meritorious service and have been recognized as such by the State Government/Government of India.

(iv) any other deserving cases at the discretion of the competent authority.”

10. Considering this scenario, the Full Bench observed in its judgment in *Dr. Amar Singh (supra)* that, as per Rules 8 and 12 of the Rules of 1983, residential plots and multi-storeyed houses were to be sold either by a draw of lots or by auction but an exception to the general rule was made under Rule 4, which provided for reservation of residential plots in favour of various categories of persons. Noting that the earlier Full Bench decision pertaining to Haryana had upheld the power of the Government to make reservations for various defined categories and groups of persons, it was held that the discretion conferred upon the Chief Minister had to be in consonance with various Constitutional provisions, as no absolute discretion would vest in the Government for making either such reservation or allotment. It was further observed that the reservation provided under Rule 4 and the policy decision dated 31.01.1989 would have to satisfy the criteria of reasonableness, as required by Article 14 of the Constitution. As validity of the reservations akin to those provided under Rule 4 (ii), (iii), (iv), (v) and (vi) of

the Rules of 1983, in favour of freedom fighters, political sufferers, defence personnel, border security force personnel, persons appointed to public service by the State Government and persons belonging to the Scheduled Castes and Backward classes, had already been upheld in **Anil Sabharwal** (*supra*) by the earlier Full Bench in the context of the State of Haryana, it was observed that it would not be necessary to examine the validity of the said reservations

11. The Full Bench however held that the discretionary quota of five per cent under the third *proviso* to Rule 4 was vague and arbitrary and was, therefore, violative of Article 14 of the Constitution. The Full Bench further held that allotments of residential plots to Members of Parliament, Members of the Punjab Legislative Assembly and Non-Resident Indians under the discretionary quota, w.e.f. 31.01.1989, were illegal and void and accordingly quashed the same, subject to certain exceptions. In cases where the *bonafide* allottees under Rule 4 (i), (vii) and the third *proviso* had already constructed houses and buildings as per sanctioned plans before publication of the notice of CWP No. 7401 of 1996 on 06.06.1996, the Trust was directed to issue instructions restraining alienation of the constructed houses/buildings by such allottees for a period of five years. Exceptions were also made in the case of allottees who were members of the Armed Forces/Paramilitary Forces/Police Forces who had fought against terrorism and civilians

affected by terrorist activities, subject to a review by a committee to be constituted by the Government. Again, such allottees were not to alienate their plots to third parties for five years.

12. The Full Bench further directed that the Government/Trust/Punjab Development Authority should immediately cause publication of a notice in two newspapers having wide circulation in the States of Punjab and Haryana and two newspapers having wide circulation in the entire country, indicating therein that, due to quashing of the allotments made under the discretionary quota, such allottees were entitled to refund of the money deposited by them and that such amounts should be refunded within two months of the making of applications by such persons, failing which the refund would carry interest at the rate of 15% per annum.

13. Be it noted that the Full Bench specifically dealt with the reservation of 5% of the plots in favour of select categories or classes of persons under the third *proviso* to Rule 4 of the Rules of 1983 and it was observed that such discretion was wholly unguided and unlimited and the only criteria which had been placed on record was the policy contained in the Notification dated 31.01.1989. The Full Bench further observed that if such discretion was to be limited only to categories (i),(ii) and (iii) in the said notification, the reservation would have to be held to be valid as reservation similar to those contained in categories

(ii) and (iii) made by the State of Haryana had already been upheld by the Court in **Anil Sabharwal** (*supra*). However, the power granted to the Government under Clause (iv) was held to be wholly arbitrary and capable of abuse and that was the reason why the Full Bench held the entire discretionary quota of 5%, as contained under the third *proviso* to Rule 4, was vague and arbitrary and was, therefore, violative of Article 14 of the Constitution of India.

14. Further, the Government of Punjab was directed to frame a policy for allotment of plots to specified classes of persons and notify such policy. Allotment under such policy was to be made by inviting applications through public notice from all those who belonged to that particular class. Therefore, even if the specified categories (i), (ii) and (iii) in the Notification dated 31.01.1989 were held to be eligible for special reservation and allotment, the above direction with regard to formulation of a policy would be applicable to those categories also, including the 'Social Service' category.

15. In the light of the above Full Bench judgment, the inchoate allotment of a plot in favour of Shashi Bala was rendered redundant and ineffective as only those persons, who were actually allotted specific plots and had constructed houses/buildings thereon as per sanctioned plans prior to 06.06.1996, stood protected by the Full Bench and even those allottees who were actually allotted plots but had not

constructed houses/buildings thereon by the effective date were to be refunded the monies paid by them within a time frame. Shashi Bala did not stand on par with these people as she was yet to be allotted an identified plot, even if she did comply with all the requirements as claimed by her, such claim being disputed by the Trust. Significantly, she did not even claim that she paid any sale consideration for a plot.

16. It is pertinent to note that the Punjab Urban Planning & Development Authority (PUDA) filed a review petition, viz., RA No. 64 of 2004 in CWP No. 7401 of 1996, claiming that allotment of plots by it would be affected by the Full Bench decision and seeking prospective overruling of allotments from a date later than 31.01.1989, by following the modification in *Harsh Dhingra* (*supra*). However, by order dated 09.07.2004, the Full bench dismissed the review petition. Thereupon, the Full Bench judgment dated 25.07.2003 and its order dated 09.07.2004 were subjected to challenge by the PUDA before this Court in SLP(C)No. 7285 of 2007, titled '*Punjab Urban Planning & Development Authority Vs. Amar Singh and others*'. The said SLP was disposed of on 24.09.2014, noting that no details were available of the allottees who were adversely affected by the Full Bench judgment, as none of them had come before this Court or had moved the High Court seeking relief, and in the absence of requisite and relevant details, this Court observed that it was not inclined to go further into the claim made by the PUDA. This

Court therefore did not entertain the appeal, leaving it open to the affected persons to seek their remedies in law in the light of the decision of this Court in *Harsh Dhingra*, if they were so advised. Even this liberty does not come to the aid and assistance of Shashi Bala, as she was never actually allotted a plot, be it before or after 31.01.1989.

17. Though Shri P.S. Patwalia, learned senior counsel, would contend that the allotment of a plot in favour of Shashi Bala stood complete upon approval by the Government of Punjab, his contention cannot be countenanced as the letter dated 11.02.1987 of the Deputy Secretary, Department of Local Government, Government of Punjab, clearly stated that the Government had merely approved the allotment of a residential plot admeasuring 500 square yards and directed the Trust to allot an identified plot to her under Rule 4 of the Rules of 1983. Therefore, the act of identifying and allotting a specific plot was to be undertaken by the Trust and it was only approval that had been conferred by the Government. That is how Shashi Bala herself understood it, as is clear from her prayer in her writ petition. Therefore, allotment of an identified plot in favour of Shashi Bala did not crystallize by the date of the Full Bench judgment in the year 2003 and remained stagnant at the stage of the Government's approval.

18. As stated hereinbefore, the decision of the Full Bench, invalidating the actual allotments made under the discretionary quota and directing the Government of Punjab to

draw up a policy in relation to reservation for various categories, including Social Service, was not brought to the notice of either the learned Judge or the Division Bench of the High Court. Notwithstanding the same, the directions issued contrary to the said Full Bench judgment, which practically stood affirmed by this Court, cannot now be accepted or acted upon.

19. On the above analysis, this civil appeal is allowed, setting aside the impugned orders dated 23.01.2008 and 17.11.2006 passed in LPA No.12 of 2008 and CWP No.9737 of 1992 respectively by the Punjab & Haryana High Court at Chandigarh.

Parties shall bear their own costs.

.....J
[VIKRAM NATH]

.....J
[SANJAY KUMAR]

**NEW DELHI;
April 17, 2023.**